

WALTER NELLES

NORMAN L. MEYERS†

To Walter Nelles the compensations of the Law—and of life—were in the “lift and lilt of a hard fight, lost or won, with or without pay, and with but dubious returns in glory, for something you deeply care for.” No life was more richly compensated in this coin of his description than his own. He had a great and passionate feeling for righteousness, for the integrity of man, for the conservation of civil liberties. Heedless of his personal welfare, over-modest as to his own good deeds, he was content to let glory pass him by. That he put up a good fight, there is no one who can deny.

It must have come as a shock to each student in turn who came to know Walter Nelles, the scholarly prober into judicial motivations, that here was a man who for the major part of his professional career had fought ferociously in legal battle on behalf of those who sought the shelter of the Bill of Rights. It did not take long, however, to sense the power of his love of freedom. For him, the Bill of Rights was no negative instrument to serve as a constitutional barrier to social change, but a guarantee to the individual of the fullness of the American prophecy of freedom of thought and conscience. If labels mean anything, he was a Liberal. And because he was a Liberal lawyer, it was natural to him to become the defender of Radicals whose rights, as a small minority group, were constantly in jeopardy. In rapid succession he defended civil liberty cases involving charges of espionage, criminal anarchy, sedition, and cases of deportation and the various other forms of Radical baiting. At a time when “too proud to fight” was dogma for a self-complacent democracy, but heresy for an individual, Walter Nelles had the courage not only to defend Pacifists, but to be one.

It must have been a great surprise to his Radical clients that when Walter Nelles came to Yale he could put aside the partisanship of the advocate and special pleader. At Yale he renewed his fight on a higher plane where his blows had an even more telling effect. Both in his teaching and in his legal research his interest continued undiminished in the rights of man. But in the best tradition of the jurist he most

†Member of the District of Columbia Bar.

admired, Oliver Wendell Holmes, he gained an Olympic calm, and sought objective truth and understanding. To the casual or incurious, his hesitancy of speech, his nervous mannerisms, and carefulness of expression may have indicated uncertainty or even confusion. One need only read his writings to dispel such notions. His felicity of phrasing, his aesthetic appreciation of expression showed clear the high standard toward which he constantly struggled, and the incisiveness of his analysis demonstrated how he endeavored to slough off the irrelevant, but at the same time not to over-state or over-simplify his case.

Walter Nelles selected for special research the summary power of a Court to punish for contempt and the problem of the labor injunction. These seemingly isolated subjects in the Law have more in common than their relationship to articles in the Bill of Rights. Both are prime illustrations of the wide discretion entrusted to the Bench. In an analysis of these, Walter Nelles struck at the jugular of the judicial process. His concern was not alone in usurpation of power by the judiciary through contempt proceedings or in the use of the injunction to crush strike activities. They but epitomized in bold fashion the whole judicial process. He was alive to the fundamental problems of the statesmanship of the Bench and the processes of the Law whereby Judges determine the pace of social change and influence the form of social organization. A good workman in the Law, he sought understanding of its architecture and designs for a better structure. "Alongside the questions of justice in particular cases is the question of judicial power, which, like all other power, is of an encroaching nature. I cannot feel that it has so completely rid itself of restraint by principles that all principles may as well be scrapped as worthless."

In an attempt to understand the judicial process he resorted to history. His was not an antiquarian interest in legal history. It might well be said that in the strict sense in which the words have come to be used that he was not a legal historian. He scoffed at the sham of precedent mongering. In Court he was willing to preserve the amenities and to pretend adherence to the orthodox faith "that Impersonal Law flows through judicial ministers who are impotent to affect it." He refused to be bound out of Court by such a mechanical concept of Jurisprudence and parted company with "silk-hatted Jurisprudence" to explore the social scene where experience pointed to the true sources of judicial conduct. In his strivings "towards legal understanding" he called to account the social movements, the economic developments, and the ideologies of the craftsmen of the Law.

His was a daring sortie into fields little trod when he published his first articles. The nice turn of phrase and the carefully hewn epigrams with which he studded his writing belie the hours of patient research

and sweat he poured into the few articles his short scholastic career permitted. In bold, seasoned strokes he painted in the background against which the judicial process must be set. The new school of critics of the Supreme Court, spawned by the current attempts to enlarge the Court, would do well to take their lights and shadows from this artist who worked with controlled emotion and without political exigencies as a spur.

In his analyses of the judicial process, Walter Nelles rejected a rigorous marxian interpretation of history as an over-simplification. While he recognized that the economic interest was dominant, to him it was not conclusive. He likewise stressed the ideal of freedom, the will to power for the sake of power, human weaknesses, and competing sets of social values and objectives. It may well be, as some will say, that his was an over-simplified understanding of the marxian concepts. Certainly his own thinking concerning history was in a state of flux. There were signs apparent of the surrender of his Liberal faith in a social sense of right. The cutting short of his writing by an early death has deprived legal history of what could have been his full contribution.

Despite the abruptness of its end, Walter Nelles' life was full and rounded. Better than any man in the Law that I know, he complied with Holmes' injunction: "But if a man is a specialist, it is most desirable that he should also be civilized; that he should have laid in the outline of the other sciences, as well as the light and shade of his own; that he should be reasonable, and see things in their proportion. Nay, more, that he should be passionate, as well as reasonable—that he should be able not only to explain, but to feel; that the ardors of intellectual pursuit should be relieved by the charms of art, should be succeeded by the joy of life become an end in itself."